86-173 (1)

NO.

Supreme Court, U.S.
FILED
AUG 4 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

RICHARD PAGE HARRIS,

Petitioner,

v.

ATTORNEY GENERAL OF THE STATE OF VIRGINIA, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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42pp

QUESTION PRESENTED

WHETHER THE COURT OF APPEALS FOR THE FOURTH CIRCUIT RENDERED A PER CURIUM DECISION IN CONFLICT WITH DECISIONS OF THIS COURT AND FEDERAL LEGISLATURE, WHEN IT RULED THAT HABEAS CORPUS RELIEF IS NOT AVAILABLE TO A PERSON PROSECUTED IN VIOLATION OF ARTICLE IV (c) AND ARTICLE V (2)(c) OF THE INTERSTATE AGREEMENT ON DETAINERS ACT?

PARTIES

The petitioner is Richard Page Harris, the named petitioner and appellant in the courts below for himself and in propria personam who is now and may in the future be confined as a prisoner in the Virginia Prison System.

The respondents are Gerald L. Baliles, Governor of the State of Virginia; Mary Sue Terry, Attorney General of the State of Virginia; and David A. Garraghty, Warden of the Nottoway Correctional Center, all of whom are named in their respective and official capacities as officials of the State of Virginia.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

No.

RICHARD PAGE HARRIS,

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v.

ATTORNEY GENERAL OF THE STATE
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Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DECISIONS BELOW

The decision of the United States Court of Appeals for the Fourth Circuit is unpublished and a copy is attached hereto as Appendix A (A-1). The order of the United States District Court for

the Western District of Virginia, at Harrisonburg, is not reported and a copy is attached hereto as Appendix C (A-5).

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on June 10, 1986. An order denying a petition for rehearing, en banc, was entered on July 8, 1986, and a copy of that order is attached hereto as Appendix B (A-3). Jurisdiction is confered by 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment VI of the Constitution of the United States guaranteeing all persons in the United States "a fast and speedy trial", and

further involves Amendment XIV of the Constitution of the United States forbidding any state from denying equal protection of the law:

> no state shall "deny any person within (their) jurisdiction the equal protection of the laws."

made applicable to the states by Section 1 and Section 5 of Amendment XIV to the Constitution of the United States:

> SECTION 1. All persons born and naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

> SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

and enforced by Title 28, Section 2254, United States Code, and this case further involves the Interstate Agreement of Detainers Act, Articles IV(c) and V(2)(c) in its application to the Speedy Trial Act, Title 18, Sections 3161-74, United States Code.

This case further involves Article I, Section 10, Clause 3 of the Constitution of the United States.

STATEMENT OF THE CASE

Petitioner recites only as much of the three and one-half year history of this litigation as is necessary for a determination of the issue presently before the Court. On April 18, 1983,

and while serving out a previously imposed federal sentence, petitioner was taken into custody by the State of Virginia pursuant to a request initiated under certain terms and conditions of the Interstate Agreement on Detainers (IAD) and further pursuant to a notice of "Prosecutor's Acceptance of Temporary Custody" also initiated by Respondents. A copy of same is attached hereto as Appendix D (A- 10). Respondent contracted with the Federal Bureau of Prisons and the Warden of the U.S. Penitentiary at Lewisburg, Pennsylvania to receive custody of petitioner for purposes of prosecution of certain untried charges and respondent further agreed to bring petitioner to trial on said charges within the 120 days "specified in Article IV(c) of the Interstate Agreement on Detainers Act" (emphasis added) (See

Appendix D: A- 10).

A period of 225 days elapsed between the time petitioner was brought to the State of Virginia by respondent and the trial date of November 29, 1983, on which petitioner was tried on charges alleging that he obtained property under false pretenses. As a result, petitioner was caused to have a verdict of guilty returned against him as to said charges and a sentence of eight (8) years in the Virginia State Penitentiary was imposed against him by the Circuit Court of Augusta County.

Petitioner appealed said verdict and sentence to the Virginia Supreme Court seeking a writ of error on the grounds of his entitlement to have said charges dismissed for failure to comply with the terms of the Interstate Agreement on Detainers Act, codified under

§ 53.1-210, Code of Virginia, as amended, and for respondents' denial of petitioner's constitutional right to a fast and speedy trial. U.S. Const., Amend. VI.

Petitioner's appeal to the Virginia Supreme Court was denied and petitioner filed a petition for a writ of habeas corpus in the United States District Court for the Western District of Virginia, at Harrisonburg, as to the decision of the Virginia courts. Upon the U.S. District Court's review of the case, the U.S. District Court denied the petition for a writ of habeas corpus and petitioner appealed to the U.S. Court of Appeals for the Fourth Circuit. The Court of Appeals rendered a per curium decision citing the reasoning of the U.S. District Court. Appendix A (A-1) and Appendix C (A-5).

The Court of Appeals denied a petition for rehearing on July 8, 1986. Accordingly, this petition for a writ of certiorari is filed.

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

A. Conflicts with decisions of this Court.

This case is important for the issues it raises reinforces the need for this Court to make clear the application of Article IV(c) and Article V(2)(c) of the Interstate Agreement on Detainers Act. Prior to the beginning of this litigation, this Court noted that the Interstate Agreement on Detainers Act should be enforced according to its terms. United States v. Sorrell, 436 U.S. 949 (1978); United States v. Mauro, 436 U.S.

340, 98 S.Ct. 1834 (1978).

Accordingly, the Fourteenth Amendment's due process guarantee provides that petitioner be entitled to the protections against actions of respondents as defined herein this cause of action and Article VIII of the Interstate Agreement on Detainers Act mandates that due process of law and equal protection of the laws ensure "when such State has enacted the same into law." Article VIII, Interstate Agreement on Detainers Act; the Virginia Agreement on Detainers, § 53.1-210, Code of Virginia, as amended.

Respondents' failure to bring petitioner to trial within the 120 day time period specified in Article IV(c) of the Interstate Agreement on Detainers Act requires the charges be dismissed and the detainer to be declared to be of no force and effect pursuant to Article

V(2)(c) of the Virginia Agreement on Detainers, § 53.1-210, Code of Virginia, as amended. Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182 (1972); Branch v. United States, 372 A.2d 998 (D.C.Ct. App. 1977); Klopfer v. North Carolina, 386 U.S. 213, 87 S.Ct. 988 (1967); Speedy Trial Act, 18 U.S.C. § 3161-74; Article V(2)(c), Virginia Agreement on Detainers, § 53.1-210, Code of Virginia as amended.

Where the State courts failed to ensure due process of law in denying relief to petitioner for respondents' violation of petitioner's constitutional rights, the U.S. District Court should have granted habeas corpus relief pursuant to 28 U.S.C. § 2254, where Article IX of the Interstate Agreement on Detainers Act requires that the "agreement shall be liberally construed so as to effectuate its purposes." In the instant

case, a denial of due process of law in face of the facts and the law as defined therein the Interstate Agreement on Detainers Act is reversible error. Foran v. Metz, 463 F.Supp. 1088 (S.D.N.Y. 1979); United States v. Thompson, 562 F.2d 232 (3rd Cir. 1977).

The Sixth Amendment to the U.S. Constitution guarantees the right to a fast and speedy trial. The legislative intent and purpose of the Interstate Agreement on Detainers Act is to ensure that Sixth Amendment right to a person taken into custody by States of jurisdictions outside of the jurisdiction maintaining legal custody of a person.

Petitioner was entitled, as a matter of law, to his Sixth Amendment right to Article IV(c) of the Interstate Agreement on Detainers Act. Respondent violated petitioner's Sixth Amendment rights

and the Interstate Agreement on Detainers Act and upon review by the U.S. District Court, habeas corpus relief was appropriate remedy as a matter of law. Picard v. Conner, 404 U.S. 270, 92 S.Ct. 509 (1971); Faye v. Noia, 372 U.S. 391, 83 S.Ct. 822 (1965).

In an order entered upon the record by the U.S. District Court during the litigation of this case, respondent was directed to forward records and transcripts (or copies thereof) in the State habeas corpus proceeding and the original trial. Respondent refused and failed to comply with the District Court's order, and the case was considered without reference to facts evidenced by the records and transcripts available.

In the U.S. District Court, respondent evaded the issue of non-compliance with the Interstate Agreement on Detai-

ners Act and based argument on factors and law governing extradition. Petitioner responded in his motion to reconsider arguing that extradition is not at issue in the instant case as the facts should not be misconstrued for consideration of the case along those lines of extradition. What is at issue is the respondents' failure to comply with the law as set forth therein Article IV(c) of the Interstate Agreement on Detainers Act which is under the Sixth and Fourteenth Amendments to the U.S. Constitution.

Further, there is a loss of access to and participation in rehabilitative programs, loss of industrial pay in wages, lack of visitation privileges, deterioration of family ties and extended custody and security classifications placed upon petitioner, constituting a restriction on liberty interests and

federal parole release considerations based on existing detainers and pending charges, all as a result of respondents' failure to comply with the terms of the Interstate Agreement on Detainers Act.

Further, the petitioner is not required to show prejudice or injury by respondents' failure to comply with the 120 day statutory period within which he was to be brought to trial. The petitioner was entitled to dismissal of the charges and he was entitled to have the detainer declared to be of no force and effect, as a matter of law, consistent with the mandate of Article V(2)(c) of the Interstate Agreement on Detainers Act.

This Court made clear the intended purpose of Article IV(c) and Article V (2)(c) of the Interstate Agreement on Detainers Act when It amended Its holding

previously set forth in Kerr v. Finkbeiner, 757 F.2d 604 (4th Cir. 1985). In Carchman v. Nash, ___U.S.___, 105 S.Ct. 3401 (1985), this Court held inter alia, that:

> "The Interstate Agreement on Detainers (Agreement) is a compact among 48 States, the District of Columbia, Puerto Rico, the Virgin Islands, and the United States. The Agreement was drafted in 1956 by the Council of State Governments and was adopted in 1958 by the State of New Jersey, where it is now codified as N.J. Stat. Ann. §§ 2A:159A-1 et seq. (West 1971). The Agreement is a congressionally sanctioned interstate compact within the Compact Clause, U.S. Const. Art. 1, § 10, cl. 3, and thus is a federal law subject to federal construction." (Carchman v. Nash, supra, at 3403).

This Court went on to state:

> "To achieve this purpose, Article III of the Agreement establishes a procedure by which a prisoner incarcerated in one party State (the sending State) may demand the speedy disposition of 'any untried

> indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner' by another party State (the receiving State). Specifically Article III requires the Warden to inform the prisoner that a detainer has been lodged against him and that he may request final disposition of the indictment, information or complaint upon which the detainer is based. If the prisoner makes such a request, the warden must forward it, together with a certificate providing certain information about the prisoner's terms of confinement, to the appropriate prosecuting official and court of receiving State. The authorities in the receiving State then must bring the prisoner to trial within 180 days, absent good cause shown, or the court must dismiss the indictment, information or complaint with prejudice, and the detainer will cease to be of any force or effect."
> (Carchman v. Nash, supra, at 3403-3404).

This Court reiterated this requirement of the Interstate Agreement on Detainers

and further stated as follows:

> "...Similarly, Article V (c) provides that if the prisoner is not brought to trial within the period provided in Article IV, 'the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice.'" (Carchman v. Nash, supra, at 3407).

Petitioner relies upon this specific constitutional guarantee of U.S. Constitution, Art. I, Sec. 10, Cl. 3, and the sanctions imposed upon violation of the said provision. Carchman v. Nash, supra.[1]

---

[1]It should be judicially noted that the Virginia Circuit Courts of Bristol and Roanoke County adhered to the same provisions of the Interstate Agreement on Detainers Act and entered orders of dismissal as to pending indictments under Article V(2)(c) of the Interstate Agreement on Detainers Act.

Further, the doctrine of collateral estoppel, pursuant to the Fifth Amendment's double jeopardy protection, a judgment by a court of general jurisdiction between the same parties on the same issues precludes relitigation of the same issues. Lewis v. Winston, 717 F.2d 888-895 (4th Cir. 1983); Allen v. McCurry, 449 U.S. 90, 94-96, 101 S.Ct. 411, 414-415 (1980); Montana v. United States, 440 U.S. 147, 153, 99 S.Ct. 970, 973 (1979); United States v. Davis, 460 F.2d 792, 795-796 (4th Cir. 1972), cf. Ashe v. Swenson, 397 U.S. 436, 443, 90 S.Ct. 1189, 1190 (1970); Clodfulter v. Commonwealth, 215 Va. 98, 105-108 (1977).

Therefore, the Commonwealth of Virginia, respondents herein named, was barred under collateral estoppel from relitigating the same issue of violation of Interstate Agreement on Detainers Act,

Article IV(c) and Article V(2)(c), after two other Virginia Circuit Courts had previously determined the same issue against respondents.

CONCLUSION

Certiorari should be granted because the Court of Appeals' decision and the reasoning of the courts below are contrary to this Court's judgment in Carchman v. Nash, supra. This case provides the proper vehicle for reinforcing the operation of the law as set forth therein the Interstate Agreement on Detainers Act, and this case further provides this Court with the proper vehicle to establish the United States District Courts' role when States fail to enforce the Interstate Agreement on Detainers Act according to its statutory provisions and terms.

Respectfully submitted,
I am

Richard Page Harris

RICHARD PAGE HARRIS
#139896
Petitioner in Propria
Personam
Nottoway Correctional
Center
Post Office Box 488
Burkeville, VA 23922

SWORN TO and SUBSCRIBED before me,

E.C. Jones.

this 16th day of JULY, 1986.

NOTARY PUBLIC

Nottoway County: VIRGINIA

My Commission expires 4 AUG.
1986.

CERTIFICATE OF SERVICE

I. Richard Page Harris, do hereby certify that a true and correct copy of the foregoing petition for a writ of certiorari and a true and correct copy of petitioner's request to clerk to certify and transmit record of Case No. 85-6671 was forwarded to respondents by forwarding same via U.S. Mail, to Richard B. Smith, Esquire, Assistant Attorney General, Attorney General of Virginia, SUPREME COURT BUILDING, 101 North Eighth Street, Richmond, Virginia, 23219, on this 1st day of August, 1986.

Signed

Richard Page Harris

RICHARD PAGE HARRIS
#139896
Petitioner In Propria Personam
Nottoway Correctional Center
Post Office Box 488
Burkeville, VA 23922

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 85-6671

Richard Page Harris,

Appellant,

versus

Attorney General of the
State of Virginia,

Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Harrisonburg. James H. Michael, Jr., District Judge. (C/A No. 85-54(H))

Submitted: December 17, 1985
Decided: June 10, 1986

Before WIDENER, SPROUSE, and WILKINSON, Circuit Judges.

(Richard Page Harris, Appellant Pro Se. Richard B. Smith, Assistant Attorney General, for Appellee.)

UNPUBLISHED

PER CURIAM:

A review of the record and the district court's opinion discloses that an appeal from its order refusing habeas corpus relief pursuant to 28 U.S.C. § 2254 would be without merit. Because the dispositive issues recently have been decided authoritatively, we deny a certificate of probable cause to appeal, deny the application for bail, dispense with oral argument, and dismiss the appeal on the reasoning of the district court. Harris v. Attorney General of the State of Virginia, C/A No. 85-54(H) (W.D.Va., Sept. 17, 1985).

DISMISSED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 85-6671

Richard Page Harris,

Appellant,

versus

Attorney General of the
State of Virginia,

Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Harrisonburg. James H. Michael, Jr., District Judge

The appellant's pro se petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of the Court requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Wilkinson, with the concurrence of Judge Widener and Judge Sprouse.

For the Court,

JOHN M. GREACEN

CLERK

FILED

JUL 8 1986

U.S. Court of Appeals
Fourth Circuit

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

RICHARD PAGE HARRIS, Petitioner, v. ATTORNEY GENERAL OF THE STATE OF VIRGINIA, Respondent.	)	Civil Action No. 85-0054(H) O R D E R By: Hon. James H. Michael, Jr. United States District Judge

---

In accordance with the written Memorandum Opinion entered this day, it is hereby

ADJUDGED AND ORDERED

that:

1. Respondent's motion for summary judgment shall be, and it hereby is, GRANTED:

2. The petition for a writ of habeas corpus shall be, and it hereby is,

DENIED: and

3. The action shall be, and it hereby is, stricken from the active docket of this court.

The clerk is directed to send copies of this Order and the accompanying Memorandum Opinion to petitioner and to counsel for defendant.

ENTER: This 17th day of September, 1985.

UNITED STATES DISTRICT JUDGE

A TRUE COPY, TESTE:

Joyce F. Witt, Clerk

By: _____
Deputy Clerk

Clerk's Office U. S. Dist. Court
AT HARRISONBURG, VA.
FILED
SEP 17 1985
JOYCE F. WITT, Clerk
By: _____
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

RICHARD PAGE HARRIS, Petitioner	)	Civil Action No. 85-0054(H)
v.	)	MEMORANDUM OPINION
ATTORNEY GENERAL OF THE STATE OF VIRGINIA, Respondent	)	By: Hon. James H. Michael, Jr. United States District Judge

---

Richard Page Harris has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in this court. Petitioner alleges that he is being held illegally pursuant to a conviction on charges of obtaining property by false pretenses in the Circuit Court of the City of Staunton on November 29, 1983, wherein he was sentenced to serve eight years in the penitentiary. Specifically, petitioner alleges that the Interstate

Agreement on Detainers was violated because his trial in the City of Staunton was not commenced within 120 days after acquisition by Virginia authorities.

Respondent argues, correctly, that claims under the Interstate Agreement on Detainers do not constitute fundamental defencts and are not generally cognizable under federal habeas corpus provisions absent a showing of prejudice. Kerr v. Finkbeiner, 757 F.2d 604, 607 (4th Cir. 1985). Petitioner has alleged prejudice in that he was unable to earn money or participate in various rehabilitative programs during the delay. This is not the type of prejudice which constitutes a fundamental defect and which will justify invalidation of a criminal conviction. Cf. Gaddy v. Michael, 519 F.2d 669 (4th Cir. 1975) (parole violation warrant).

Finally, the court notes that the power of a court to try a person for a crime is not impaired by illegal extradition. Frisbie v. Collins, 342 U.S. 519 (1952); Harris v. South Carolina, 642 F.2d 71 (4th Cir. 1981).

Accordingly, respondent's motion for summary judgment shall be granted and the writ of habeas corpus shall be denied in an Order entered this day.

ENTER: This 17th day of September, 1985.

UNITED STATES DISTRICT JUDGE

Clerk's Office U. S. Dist. Court
AT HARRISONBURG, VA.
FILED
SEP 17 1985
JOYCE E. WITT, Clerk
By: Deputy Clerk

APPENDIX D

PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH ANOTHER PROSECUTOR'S REQUEST FOR DISPOSITION OF A DETAINER

To: Warden, United States Penitentiary, Lewisburg, Pennsylvania 17837

According to a letter of December 3, 1982, from Vincent A. Lilley, Assistant Commonwealth's Attorney for Roanoke County, Virginia, a copy of which said letter is attached hereto, Richard Page Harris, a/k/a James William Maddox, is being returned to this state at the request of the Commonwealth's Attorney for Roanoke County, Virginia. I hereby accept the offer of temporary custody of Richard Page Harris, a/k/a James William Maddox, who has a criminal warrant lodged as a detainer against him for a felony--bad check and auto larceny in the City of

Staunton, Virginia, of which I am the Commonwealth's Attorney (prosecutor).

I plan to bring this person to trial within the time specified in Article IV (c) of the Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer immediately after trial.

It is my understanding that the prisoner is being transported to Roanoke County, Salem, Virginia, for his trial on pending felonies within that jurisdiction. It is my request that as soon as he has been tried there that he be brought to the City of Staunton and housed in the Augusta County Jail until he

can be tried here. Thereafter, it is my understanding that he also has pending charges against him in the City of Newport News, Virginia, and the City of Winchester, Virginia, and you may be hearing from these other jurisdictions in a form similar to this one pursuant to Form VIII of the Agreement on Detainers.

It is my understanding that since the prisoner is being brought to Virginia for trial we must dispose of all charges against him in the Commonwealth of Virginia before returning him to your institution, or we will be foreclosed later from being able to bring him back to Virginia once more for resolution of these other charges against him. Thus, we are initiating this request.

Raymond C. Robertson

Raymond C. Robertson,
Commonwealth's Attorney
for the City of Staunton,
Virginia

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers.

DATED: 2/25/83

SIGNED: Ludwig Bumgardner
Judge